March 26, 2025

David Nocenti, Esq.
Counsel, Office of Court Administration
25 Beaver Street, 10th Floor
New York, NY 10004
via email: rulecomments@nycourts.gov

Re: Request for Public Comment on three proposed changes relating to contested matrimonial actions: (i) amending the Statement of Net Worth required by 22 NYCRR § 202.16(b); (ii) amending 22 NYCRR § 202.16(h) relating to Statements of Disposition; and (iii) adding a new 22 NYCRR § 202.16(p) regarding eligibility for publicly funded counsel

Dear Mr. Nocenti,

Her Justice is submitting the following comments in response to the three (3) proposed changes relating to contested matrimonial actions. While we support the general purpose behind the rule changes, for reasons set forth below we have concerns that some of the proposals would result in confusion and additional burdens upon the very litigants they seem designed to help.

Her Justice is a not-for-profit organization that, since 1993, has been dedicated to providing pro bono legal services to low-income, underserved, and abused women. Her Justice fills a unique gap in New York City providing legal assistance to women living in poverty and facing high stakes legal needs who cannot get help elsewhere. Her Justice provides legal services to its clients primarily by recruiting and training volunteer attorneys from New York City law firms to represent this underserved class of litigants in matrimonial, family, and immigration law. Each year Her Justice lawyers mentor and train over 1,500 lawyers to provide legal representation to over 4,500 women in all five boroughs of New York City. Matrimonial cases – both contested and uncontested – represent a significant portion of our practice, and Her Justice has flexibility to serve a wide range of women living in poverty in this legal area, including domestic violence survivors. As an organization we are devoted to ensuring the most vulnerable litigants have access to high quality legal representation and that the court processes they face are equitable and ensure their ability to seek the justice and fair results they deserve.

(i) amending the Statement of Net Worth required by 22 NYCRR § 202.16(b)

This proposed rule change purports to adjust the language in the mandatory Statement of Net Worth (SNW) into simpler English and to include updated financial categories. Her Justice does not have comments on the proposed substantive changes to the document.

(ii) amending 22 NYCRR § 202.16(h) relating to Statements of Disposition

This proposed rule change adjusts the deadline for submission of the Statement of Proposed Disposition (SPD) and requires more detailed content and more cooperation of counsel. Her Justice agrees with the proposed deadline change, as submission in advance of a pre-trial conference as opposed to at filing of Note of Issue is in better alignment with the typical "flow" of a litigated action. Her Justice also generally supports standardizing the content of SPDs and requiring more clarity with respect to resolved verses outstanding issues. We have some concerns with respect to the procedural requirements and lack of clarity of what the parties and attorneys should expect with the proposed new requirements.

The proposed new section (h)(1)(ii)(b) requires that attorneys for the parties "meet in advance of the pretrial conference to discuss an agreed upon statement of facts which statement will be marked in evidence at the trial of the action. This provision shall not be applicable where one or both of the parties is self-represented." An agreed upon statement of facts can be immeasurably helpful in highly contested actions as a means of reducing confusion and stress for the parties as well as reducing costs by sparing precious trial time. A rule standardizing and clarifying the process of developing this document is welcome; however, this section as written is concerning for several reasons:

a. The requirement that attorneys "meet in advance of the pre-trial conference to discuss an agreed upon statement of facts" is vague and leaves attorneys with little direction as to how to proceed, especially when an attorney is facing a recalcitrant opposing counsel or party. As an organization that assists women facing multifaceted forms of abuse, including litigation abuse and court delay tactics, we have concerns this will be unduly burdensome in many circumstances. We fear pro bono or nonprofit counsel may be forced to expend considerable resources to secure cooperation by an opposing party who is actively engaging in delay tactics through their attorney. This could be alleviated with an option, for example, for an attorney to submit an affirmation that despite good faith efforts they were not able to secure such a meeting or complete such a document and to seek appropriate sanctions. Such an option would also serve as a clear message to attorneys and litigants that this requirement is to be taken seriously and not merely another opportunity to hinder an already difficult process.
b. The phrasing "which statement will be marked in evidence at the trial of the action" is confusing and puts into question the purpose of the required agreed upon statement of facts. It is not clear whether the attorneys are preparing a single document to be submitted into evidence at trial, by whom, or whether its submission as evidence will be axiomatic.
c. Her Justice agrees with setting aside this provision when one or both parties is self-represented. We think this section warrants clarification, however, as to whether it applies to cases with limited representation, where a litigant has secured or been appointed counsel for only a portion of the proceedings (see also section iii below). In cases with limited representation, attorney participation in securing an agreed upon statement of facts would be valuable as to issues that will be determined at trial (and not as to ancillary issues that have been resolved or are likely to be resolved through settlement).

(iii) adding a new 22 NYCRR § 202.16(p) regarding eligibility for publicly funded counsel

This proposed rule change establishes procedures for assignment of counsel in matrimonial actions and standardizes eligibility criteria and considerations. Her Justice generally supports having clear procedures and standard criteria in the assignment of counsel. We particularly support the Presumption of Eligibility section (a)(2). We do have concerns however with respect to the overall process and the burden it places on low-income litigants who must navigate the onerous process of requesting assigned counsel without the benefit of counsel to assist them. Her Justice's primary concern is that though the proposed new rules explicitly state this process should not be "unduly burdensome," the overall process of and requirements for requesting assigned counsel remain considerably difficult and time-consuming. The parties most likely to qualify for assigned counsel are among the most vulnerable: they are low-income, they may have limited education or limited English proficiency, and are without the very resources needed to navigate complex legal proceedings. The proposed procedures as outlined are problematic in several ways:

a. Upon an application for assigned counsel, the court must consider among other things the party's spouse's resources and ability to pay for counsel. For victims of abuse, it may be problematic to wait for the court to obtain adequate information, *including from their adversary*, to determine eligibility for something as fundamental to due process as legal representation. As discussed in section ii above, this leaves many victims of abuse further vulnerable to the obstructionist tactics of their abuser. Her Justice suggests that language be added to section (a)(2)(b) to clarify that failure of their adversary to provide timely financial disclosure should not in any way prejudice or delay a party's request for assignment of counsel.
b. The proposed rule also directs that "upon a finding that a spouse of a party is able to pay for such counsel... the court shall instead alert the non-monied spouse of their right to make a motion to have the monied spouse pay their counsel fees...." This would put the burden on a low-income party to file a *second* application (tantamount to a motion) to obtain counsel, which is unnecessarily duplicative, costly, and time-consuming. In the alternative, the court could notify the party seeking assigned counsel at the outset of the request for counsel fees and address the requisite documentation for both. In addition, the Office of Court Administration could, for example, create an information sheet that addresses both assignment of counsel and requests for counsel fees and, where a party is requesting counsel, streamline the court's review of all related documents. In short, the proposed rule envisions a two-step process where a more consolidated review by the court would benefit the very litigants the proposed rule aims to assist.
c. We recognize that the proposed rule includes the language that "nothing herein should prevent the court at first instance... from providing counsel where appropriate subject to providing proof of eligibility subsequent thereto." This language may help to alleviate some of the concerns addressed above, but it does not adequately ensure timely assignment of counsel. Her Justice proposes that the language permitting the court to assign counsel on a preliminary basis

pending further review be strengthened to ensure that assignment of counsel is timely to mitigate the harm to the applicant party, as reallocation of costs can be subsequently addressed if needed. As addressed above, an adversary's failure to provide timely financial disclosure should not in any way prejudice a party's request for assignment of counsel or delay said assignment.

d. Her Justice also urges amendment to the proposed rule to provide notice to the parties of the right to seek appointment of counsel at the outset of the proceedings upon filing or service of process. In addition, the rule could set forth that the contested Request for Judicial Intervention (RJI) form will include notice of the process to request assignment of counsel, or state that a separate notice will be served with the RJI. This would ensure litigants are informed of the opportunity to seek assigned counsel as early as possible in the proceedings.

Language Access Concerns Applicable to All Proposed Rule Changes

Her Justice believes that for these proposed rule changes to have meaningful impact, the related documents must be translated into languages other than English. This is especially important for pro se litigants. The proposed rule changes impact significant aspects of a contested matrimonial case and involve notice to litigants of critical processes. For example, the SNW is required (and may need to be repeatedly updated) for a number of significant determinations to be made by the court often in preliminary or emergency applications. These include applications for appointed counsel (see also section iii above), calculations of temporary and permanent support and maintenance, and for assignment of costs. These determinations can have an immediate impact on a low-income litigant's ability to meaningfully participate in the proceedings and thus it is critical that litigants are able to access and complete the SNW quickly. We ask that the Office of Court Administration consider making this document, the SPD, and any documents related to right to counsel available in the most common languages spoken and read in New York State.

Thank you for considering Her Justice's changes to the proposed rules. Please contact us at adiamanti@herjustice.org or rbraunstein@herjustice.org with questions or for further information.

Sincerely,

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